

P-401/CP-89-951 ORDER DETERMINING THE STATUS OF INTEREXCHANGE
CARRIERS UNDER MINN. STAT. § 237.161, SUBD. 3 (B) (1990)

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition for
Extended Area Service From the
Hokah Exchange to the La Crosse,
Wisconsin Calling Area

ISSUE DATE: November 21, 1991

DOCKET NO. P-401/CP-89-951

In the Matter of the Petition of
Certain Subscribers in the
Northfield Exchange for Extended
Areas Service to the
Minneapolis/St. Paul
Metropolitan Calling Area

DOCKET NO. P-421/CP-87-352

In the Matter of the Petition of
Certain Subscribers in the
Cannon Falls Exchange for
Extended Areas Service to the
Minneapolis/St. Paul
Metropolitan Calling Area

DOCKET NO. P-407,421/CP-87-216

ORDER DETERMINING THE STATUS OF
INTEREXCHANGE CARRIERS UNDER
MINN. STAT. § 237.161, SUBD. 3
(B) (1990)

PROCEDURAL HISTORY

I. Proceedings to Date

On April 22, 1991, the Minnesota Department of Public Service (the Department) requested that the Commission interpret Minn. Stat. § 237.161, subd. 3(b) (1990) to define the term "affected telephone company" and order the interexchange carriers (IXCs) serving the three exchanges petitioning for interLATA and/or interstate extended area service (EAS), Cannon Falls, Northfield and Hokah, to file toll contribution studies.

On July 16, 1991, the Commission issued an Order in the above-referenced Cannon Falls, Northfield and Hokah dockets requiring all IXCs to certify that they had examined their records to determine whether they carried any traffic between the petitioned exchanges and the petitioning exchanges and to report the results of that examination to the Commission within 30 days of the Order. The IXCs were also to explain whether they considered themselves to be affected telephone companies under the EAS law, Minn. Stat. § 237.161, subd. 3 (b) and to propose a study methodology to use to determine contribution amounts. The July 16, 1991 Order also required every IXC that considered itself an affected telephone company, every involved LEC, and the Department to address how income neutrality should be achieved.

These comments were due within 30 days of the Order and replies within an additional 15 days.

On August 14, 1991, GTE Minnesota and US West Communications, Inc. (USWC) filed their comments in response to the July 16, 1991 Order.

On August 15, 1991, the Department, United Telephone Company (United), Vista Telephone Company of Minnesota (Vista) and AT&T Communications of the Midwest (AT&T) filed their comments in response to the July 16, 1991 Order.

On August 19, 1991, Metromedia and Access Plus filed their comments in response to the July 16, 1991 Order.

On August 30, 1991, USWC filed reply comments and MCI Telecommunications Corporation (MCI) filed a Motion for an Extension of Time to File Comments in Response to the July 16, 1991 Order.

On September 16, 1991, MCI and Telecom*USA's filed their comments in response to the July 16, 1991 Order.

On October 2, 1991, the Department filed reply comments.

On October 3, 1991, Allnet filed comments in response to the July 16, 1991 Order.

On November 6, 1991, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. The Issue

The threshold issue in this matter, of course, is whether interexchange companies (IXCs) that carry toll traffic over proposed EAS routes are "affected telephone companies" as that phrase appears in the 1990 EAS law. Only if IXCs are affected telephone companies for purposes of the EAS statute must the Commission proceed to the second question posed in the July 16, 1991 Order, i.e. how income neutrality for such IXCs should be achieved. The key phrase in resolving the threshold question appears in Minn. Stat. § 237.161, subd. 3 (b) (1990):

(b) The commission shall establish rates that are income neutral for each affected telephone company at the time at which the commission determines the extended area service rates. The commission shall consider the interests of all parties when determining a fair and equitable extended area service rate for a local telephone exchange that is newly included in the extended area service. (Emphasis added.)

The Commission's decision will determine whether EAS rates must be set so that when EAS is installed the carriers who currently carry toll traffic between the petitioning and petitioned exchanges do not experience an increase or decrease in their income due to the installation of EAS. In addition to the dockets joined for this Order, the Commission's decision will affect many other dockets currently pending before the Commission.¹

III. Positions of the Parties

In response to the Commission's July 16, 1991 Order, 11 parties filed comments on the issue of whether IXCs that carry traffic over proposed EAS routes are "affected telephone companies." pursuant to the EAS statute. On this issue, the parties may be divided into three groups.

The first group (Group One) consists of IXCs who suggested that their status as "affected telephone companies" depended upon the level of traffic they carried over the proposed EAS routes. Metromedia reported that the only proposed EAS routes that it was involved in were the Northfield-MCA and Cannon Falls-MCA. Metromedia did not consider itself an "affected telephone company" due to the "minimum" amount of traffic it carried over those routes. Access Plus, conversely, considered itself an "affected telephone company" with respect to the Northfield-MCA route because the total dollar value volume for its traffic over this route represented one percent of its gross dollar volume, which it considered a "significant" dollar amount.

The second group of commenters (Group Two) took the position that IXCs carrying traffic over proposed EAS routes are "affected telephone companies." This group included those who simply assumed that this was the case (GTE Minnesota, United, and Vista) and those who argued that any IXC whose business of carrying toll traffic was displaced by the installation of an EAS route was an

¹ Cannon Falls to the Metropolitan Calling Area (MCA), P-407, 421/CP-87-216; Northfield to the MCA, P-421/CP-87-352; Hokah to LaCrosse, Wisconsin, P-401/CP-89-951; Easton to Wells, P-519, 403/CP-89-703; Winnebago to Blue Earth, P-403/CP-89-930; Hallock/Kennedy, P-407/CP-90-1078; Kennedy to Hallock, P-407/CP-91-373; Loman to International Falls, Ranier, and Ericsburg, P-407/CP-90-547; Northrop/Truman, P-405/CP-90-84; Sherburn to Fairmont, P-405/CP-89-1080; Dodge Center to West Concord and Claremont, P-407/CP-90-723; Leota to Chandler, P-405/CP-91-236; Brandon to Alexandria, P-527, 430/CP-91-630; Evansville to Alexandria, P-527, 430/CP-91-648; Millerville to Alexandria, P-527, 430/CP-91-608.

"affected telephone company" within the meaning of the EAS statute (the Department, MCI, Telecom*USA).²

The third group (Group Three) argued that IXCs were not "affected telephone company" as contemplated by the statute. This group consisted of AT&T and USWC.

Group One

The approach of the first group is not acceptable. The statute gives no indication that status as an "affected telephone company" is to be determined on a sliding impact scale as suggested by the first group. Therefore, the Commission will concentrate on the arguments from the second and third groups.

Group Two: IXCs are "Affected Telephone Companies"

Group Two advocates rely principally on the canon of legislative construction that a statutory term should be given its plain and ordinary meaning. Since there is no disagreement that IXCs are telephone companies, the Commission's analysis, according to these parties, may begin and end with construction of the word "affected." The term in question appears in the following section:

(b) The commission shall establish rates that are income neutral for each affected telephone company at the time which the Commission determines the extended area service rates..... Minn. Stat. § 237.161, subd. 3 (b) (1990). (Emphasis added.)

By the plain meaning of the word, they argue, IXCs placed in the position of losing a profitable or unprofitable toll route because of conversion into an EAS route are "affected."

If the Commission needed to look beyond the plain meaning of the statute, these parties maintain that statements made to the House Energy and Public Utilities Committee when it considered this statute indicate that the legislature intended the statutory language in question to apply to IXCs.

Group Three: IXCs are not "Affected Telephone Companies"

Group Three parties did not focus solely on the term "affected," but discussed the statute as a whole, arguing that its several sections reveal that IXCs are not "affected telephone companies" as that phrase appears in Subdivision 3(b).

² The comments of Allnet were incomplete and, hence, difficult to categorize. It would appear, however, that Allnet adopts a view consistent with the Department, that carrying any toll traffic over a proposed EAS route would render the company an "affected telephone company."

IV. Commission Analysis

The Commission, having carefully reviewed this matter, is persuaded that the proper approach to interpreting the phrase "affected telephone company" is to look at the entire statute in which that phrase is located rather than focusing narrowly on the word "affected" and deducing from that single word what the legislature intended. The Minnesota Supreme Court is clear on this point.

A statute should not be construed by dividing it into separate words and applying to each word some particular definition given by lexicographers and reconstruct the instrument upon the basis of such definitions. In re Reynolds' Estate, 219 Minn. 449, 18 N.W.2d 238 (1945).

In construing a legislative act, a section thereof is not to be considered apart from other sections of the act, but the text is to be read and construed as a whole. Underhill v. State, 208 Minn. 498, 294 N.W. 643 (1940).

When the EAS statute is read properly, i.e. as a whole, it is clear that the legislature did not intend to apply the term "affected telephone company" beyond the local exchange companies nor to require that EAS rates be set to maintain IXCs income neutral.

A. By Itself, the Phrase "Affected Telephone Company" Has No Plain Meaning

Group Two suggests that it is unnecessary to read the statute as a whole to understand the phrase "affected telephone company." According to Group Two, the word "affected" has a plain and inescapable meaning and refers to all telephone companies whose income would be affected, i.e. impacted by the installation of EAS. However, there is nothing about the word "affected" that plainly and unequivocally refers to income impact. In fact the legislature uses the identical phrase, "affected telephone company" elsewhere in the statute, clearly not referring to telephone companies whose income has been affected by installation of EAS. The identical phrase appearing in Subdivision 4 refers to the local exchange company that would be providing EAS across LATA boundaries.

B. Amendment in Guise of Interpretation is Not Permitted

In actuality, Group Two is not requesting the plain meaning of "affected telephone company" at all. Instead, its interpretation requires that the Commission add several words to the legislation. Group Two would have Section 3(b) read as follows:

The commission shall establish rates that are income neutral for each affected telephone company telephone company whose income would be affected by the installation of EAS.

Such an amendment to the statute, of course, may be made only by the legislature, not the Commission.

C. The Group Two Interpretation is Not Supported by Text of Statute

There is no internal textual support for Group Two's position. If Subdivision 3 (b) were interpreted as Group Two desires, IXCs and subscribers in petitioning exchanges would experience major consequences. An IXC paying access fees to an affected local exchange company in excess of the toll revenues it receives from such route (i.e. those losing money on the route) would find itself locked in to that loss situation and be required to pay the LEC the amount of its current loss indefinitely, even though it was no longer had a presence in the exchange providing the toll service. Conversely, an IXC currently profiting from its provision of toll service in the affected exchanges would indefinitely receive payments in the amount of its profit from the petitioning LEC despite the fact that it provided no corresponding service.

At the same time, subscribers in an exchange where EAS is installed would be paying EAS rates that would be higher or lower depending not on the cost of the service purchased (the EAS) but depending on whether the IXCs that formerly carried toll traffic between the affected exchanges had been making or losing money on the route at the time EAS rates were set.

The Commission finds no indication that the statute evinces an intention to produce these extraordinary results. Indeed, the statute focuses entirely on EAS as a local service. The term "interexchange company" appears nowhere in the entire statute. On the contrary, terms evincing a local focus appear throughout the statute, e.g. "exchange," "local calling area," "the telephone company serving the petitioning exchange," a list of costs incurred by a local exchange company installing EAS, "the petitioning exchange," "the telephone company serving the added exchange," "a local telephone exchange that is newly included," "a telephone company that provides local telephone service in an exchange that is included."

In these circumstances, it is unreasonable to assume that the legislature abruptly switched focus in Section 3(b) and intended a characterizing phrase ("affected telephone company") to include IXCs.³

On the contrary, analysis of specific provisions of Minn. Stat. § 237.161 (1990) supports the conclusion that the legislature did

³ If telephone companies are "affected" within the meaning of the statute as Group Two argues simply because their income is impacted by installation of EAS, there is no reason to draw the line at IXCs. Other telephone companies impacted in the same way, such as customer-owned coin operated telephone companies and AOS providers, would also be "affected" and entitled to EAS rates that maintained them income neutral.

not intend to include IXCs as Subdivision 3(b) "affected telephone companies":

Subdivision 3(b) speaks of establishing income neutral "rates". Subdivision 2 specifies the bases for those rates. The elements identified in subd. 2, therefore, indicate what companies the legislature intended to be maintained income neutral by those rates. Tellingly, in listing the basis of EAS rates, subd. 2 does not list an adjustment for lost toll revenue or lost access payments as it would surely do if EAS rates had to be set to maintain IXCs income neutral.

If Group Two's position is accepted, IXCs that carry toll over the proposed EAS route at a loss must be maintained income neutral by being required to make a contribution to the local exchange company serving the petitioning exchange in the amount of the IXC's loss. However, Subdivision 3(a) identifies the local exchange company as the company that must be maintained income neutral. Subdivision 3(b) further requires that all the costs of "providing" EAS must be apportioned between the petitioning exchange and the petitioned exchange(s). There is no provision requiring any other party to bear any of these costs or to share the burden of maintaining the income neutrality of the company serving the petitioning exchange. Accordingly, Group Two's position is inconsistent with Subdivision 3(a).

D. Practical Effects at Odds With Legislative Intent

Finally, it is appropriate to consider the practical implications of the interpretation urged by Group Two. Minn. Stat. § 645 (6) (1990).⁴

As a practical matter, if IXCs are to be considered affected telephone companies, the Commission would have to arrange to receive and process filings from all IXCs carrying traffic over the proposed EAS routes. If submission of a filing were made mandatory, a large enforcement problem would arise. If submissions are made voluntary, only those IXCs that make money on a proposed EAS route will file to recover their lost income. At best, it would be difficult and time-consuming to obtain information from the many and changing IXCs that provide toll service over EAS routes. As interLATA service becomes more competitive and as the Minnesota Independent Equal Access Corporation's (MIEAC's) centralized equal access (CEA) service introduces 1+ competition into ILEC interLATA and intraLATA markets, the IXCs carrying toll traffic over the routes will change and the number of IXCs will increase.

In short, the already complicated EAS rate setting process would be greatly complicated by expanding the number of companies involved in the one-time rate setting process and potentially on-

⁴ Minn. Stat. § 645 (6). "The construction of a statute must be sensible, reasonable, and practical, and broad and practical considerations should control." Zochrison v. Redemption Gold Corporation, 200 Minn. 383, 274 N.W. 536 (1937).

going compensation agreements between the affected telephone companies. Group Two's interpretation would significantly interfere with one of the major objects of the EAS statute, to streamline the process for expanding EAS in Minnesota.

D. Extrinsic Construction Aids: Legislative History

The Commission finds that when the statute is considered in its entirety, the phrase "affected telephone company" in Subdivision 3(b) is not ambiguous. In context, the phrase clearly refers to the telephone companies who are "affected" by the EAS rate setting process, i.e. the LEC serving the petitioning exchange and the LEC(s) serving the petitioned exchange(s). The Commission is precluded from attempting to change clear legislative expression through recourse to extrinsic considerations such as legislative history. The Minnesota Supreme Court states the rule as follows:

No room for judicial construction exists when the statute speaks for itself. Commissioner of Revenue v. Richardson, 302 N.W.2d 23,26 (1981).

V. Commission Action

The Commission finds that when the legislature used the phrase "affected telephone company" in Minn. Stat. § 237.161, subd. 3 (b) (1990) it did not intend to refer to IXCs that carry toll traffic over proposed EAS routes. Instead, the phrase refers solely to the local exchange companies serving the petitioning exchange and the petitioned exchange or exchanges.

Accordingly, the LECs serving the proposed EAS routes joined in this Order will be required to file cost studies and proposed rates within 45 days of this Order with a comment period as set forth in the Ordering Paragraphs.

ORDER

1. The phrase "affected telephone company" appearing in Minn. Stat. § 237.161, subd. 3 (b) (1990) shall have the meaning given to it by the legislature, as stated in this Order.
2. Within 45 days of this Order, U S West Communications, Inc. (USWC), Vista Telephone Company (Vista), GTE Minnesota, United Telephone Company (United), Scott-Rice Telephone Company (Scott-Rice), and Eckles Telephone Company (Eckles) shall file cost studies and proposed rates for the Northfield-MCA and Cannon Falls-MCA EAS routes proposed in Docket Nos. P-421/CP-87-352 and P-407,421/CP-87-216.
3. Within 45 days of this Order, Ace Telephone Company (Ace) shall file a cost study for the Hohah-LaCrosse EAS route proposed in Docket No. P-401/CP-89-951.

3. Within 90 days of this Order, the Department shall file its report and recommendation regarding the cost studies and proposed rates filed pursuant to Ordering Paragraph 2.
4. Parties may comment on the Department's report and recommendation within 20 days of the Department's filing.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)